

IN THE COURT OF MS. NIVEDITA ANIL SHARMA,
ADDITIONAL SESSIONS JUDGE
(SPECIAL FAST TRACK COURT)-01,
WEST, TIS HAZARI COURTS, DELHI

Sessions Case Number : 61 of 2013.
Unique Case ID Number : 02401R0224952011.

State

Versus

Mr.Ranjeet Singh

Son of late Mr.Suchit Singh,
Resident of Security Guard, K.R Manglam School,
Vikas Puri, New Delhi.

First Information Report Number : 73/11.
Police Station Vikas Puri.
Under sections 376/354 of the Indian Penal Code.

Date of filing of the charge sheet before the Court of the Metropolitan Magistrate : 04.05.2011.
Date of receipt of file after committal in the Sessions Court : 30.05.2011.
Date of transfer of the file to this Court ASJ (SFTC)-01, West, THC, Delhi. : 19.01.2013.
Arguments concluded on : 28.10.2013.
Date of judgment : 28.10.2013.

Appearances: Ms. Neelam Narang, Additional Public Prosecutor for the State.
Accused has been produced from judicial custody.
Mr.S.D.Pushkar, counsel for the accused.
Ms.Shubra Mehendiratta, counsel for the Delhi Commission for Women.

Sessions Case Number : 61 of 2013.
Unique Case ID Number : 02401R0224952011
FIR No. 73/2011, Police Station Vikas Puri
Under section 376/354 of the Indian Penal Code.
State versus Ranjeet Singh

JUDGMENT

“Now, should we treat women as independent agents, responsible for themselves? Of course. But being responsible has nothing to do with being raped. Women don’t get raped because they were drinking or took drugs. Women do not get raped because they weren’t careful enough. Women get raped because someone raped them.”--- Jessica Valenti, The Purity Myth: How America's Obsession with virginity is Hurting Young Women.

1. This case falls into the category of **twenty oldest cases** and a sincere endeavour has been made to dispose the same expeditiously.

2. The present case is of rape of a Burmese woman, who is a refugee in India, by an Indian, in whose country she has taken refuge. She has been allegedly raped by an Indian who not only was under legal duty but also a moral duty and responsibility to ensure that no harm is caused by him to anyone who had taken refuge in his country.

3. Rape is a dark reality in Indian society like in any other nation. This abnormal conduct is rooted in physical force as well as familiar and other power which the abuser uses to pressure his victim. Nor is abuse by known and unknown persons confined to a single political ideology or to one economic system. It transcends barriers of age, class, language, caste, community, sex and even family. The only commonality is power which triggers and feeds rape. Disbelief, denial and cover-up to “preserve the family reputation” are often then placed above the interests of the victim and her abuse. Rape not only is abominable and ghastly but it is also inhuman and

barbaric. The victim is allegedly subjected to unwanted physical contact by a perverted male who cannot control his basic instincts and turns into an animal to satisfy his physical desires.

PROSECUTION CASE

4. Mr. Ranjeet Singh, the accused, has been charge sheeted by Police Station Vikas Puri, Delhi vide first information report (hereinafter referred to as the FIR) number 73/11 for the offence under sections 376/354 of the Indian Penal Code (hereinafter referred to as the IPC) on the allegations that on 02.03.2011 at 9.00 p.m at WZ-36 Bodella, Vikas Puri, he committed rape on the prosecutrix (name withheld to protect her identity) who is a Burmese refugee and on 03.03.2011 at about 7.00 a.m. at WZ-36 Bodella, Vikas Puri, New Delhi, he used criminal force upon the prosecutrix intending to outrage her modesty.

CHARGE SHEET AND COMMITTAL

5. After completion of the investigation, the charge sheet was filed before the Court of the learned Metropolitan Magistrate on 04.05.2011 and after its committal, the case was assigned to the Court of the learned predecessor vide order dated 30.05.2011 of the learned Sessions Judge, Delhi. Further, the case has been transferred and assigned to this Court i.e. **Additional Sessions Judge (Special Fast Track Court) -01, West, Tis Hazari Courts, Delhi for 19.01.2013** vide order bearing number 20/372-512/F-3(4)/ASJ/01/2013, dated 19.01.2013 of the learned District and Sessions Judge, Delhi.

CHARGE

6. After hearing arguments, charge for offence under sections 376/354 of the IPC was framed against the accused by the learned predecessor vide order dated 25.07.2011 to which he pleaded not guilty and claimed trial.

PROSECUTION EVIDENCE

7. In order to prove its case, the prosecution has examined as many as 11 witnesses i.e. the prosecutrix as PW1; Mr. Awn Khan Pau, husband of the prosecutrix, as PW2; Ct . Jitender as PW3; HC Krishan Mohan, MHCM as PW4; Ct. Kalu Ram as PW5; SI Omvir Dabas , the Duty Officer who had recorded the formal FIR of the case, as PW6; W/SI Vandana the Investigation Officer of the present case, as PW7; Dr. Sunita Seth, (who had been deputed by MS of DDU hospital to depose in place of Dr. Kanika Sood) who had medically examined the prosecutrix as PW8; Ct. Sudesh as PW9; Dr. Shweta as PW10; and Mr. Naresh Kumar FSL Expert, who had given a FSL report, as PW11.

8. As the prosecutrix (**PW1**) and her husband Mr.Awn Khan Pau (**PW2**) are Burmese and unable to speak Hindi and English languages, and could speak only Burmese, Mr. Khual Cin Kam, Third Secretary, Embassy of Union of Myanmar, Chankyapuri, New Delhi interpreted their evidence, after being administered the oath to interpret their evidence truthfully and completely.

9. The accused and his counsel have preferred not to cross examine

PWs 4, 5, 8, 9, 10 and 11 due to which their evidence remains uncontroverted and unrebutted and can be presumed to have been admitted as correct by the accused.

10. The prosecution preferred not to examine PW Ms.Ro Rei Lian as she was not available in India, as elaborated in the statement dated 19.02.2013 of the Additional Public Prosecutor.

11. The accused and his counsel have admitted the evidence of PW Dr.Shruti and the MLC of the accused prepared by her at the time of medical examination of the accused, as elaborated in the statement dated 28.05.2013 of the counsel for the accused.

STATEMENT OF THE ACCUSED UNDER SECTION 313 OF THE CR.P.C.

12. In his statement under section 313 of the Cr.P.C., recorded on 12.08.2013, the accused has controverted and rebutted the entire evidence against him submitting that he is innocent and has been falsely implicated in this case. He further submitted that a few days prior to 03.03.2011, may be on 25-26.02.2011 when he was cleaning outside his house, some water had gone towards the house of the prosecutrix due to which she had become annoyed. The prosecutrix has implicated him in this false case as she was annoyed with him. She has implicated him in false case in collusion with the interpreter in order to extort money from him.

ARGUMENTS

13. I have heard arguments at length. I have also given my conscious thought and prolonged consideration to the material on record, relevant provisions of law and the precedents on the point. I have also carefully perused the written arguments filed on behalf of the accused.

14. The Additional Public Prosecutor for the State has requested for convicting the accused for having committed the offence under sections 376/354 of the IPC submitting that the prosecution has been able to bring home the charge against the accused by examining its witnesses whose testimonies are corroborative and reliable.

15. The counsel for the accused, on the other hand, has requested for his acquittal submitting that there is nothing incriminating against the accused on the record. The prosecutrix has implicated the accused in false case in collusion with the interpreter and well as one Mr.R.K.Bangoo, Advocate, Delhi Commission for Women in order to extort money from the accused. Moreover, he was made to sign some documents in the PS but the same were not read over to him nor the accused was allowed to read them and had not committed any offence. There is a delay in lodging of the FIR. The evidence of the prosecutrix is not reliable. Prayer for the discharge of the accused has been made.

DISCUSSION, ANALYSIS, OBSERVATIONS AND FINDINGS

16. The question is how to test the veracity of the prosecution story especially when it has some variations in the evidence. Mere variance of the

prosecution story with the evidence, in all cases, should not lead to the conclusion inevitably to reject the prosecution story. Efforts should be made to find the truth, this is the very object for which the courts are created. To search it out, the Courts have been removing chaff from the grain. It has to disperse the suspicious cloud and dust out the smear as all these things clog the very truth. So long chaff, cloud and dust remains, the criminals are clothed with this protective layer to receive the benefit of doubt. So it is a solemn duty of the Courts, not to merely conclude and leave the case the moment suspicions are created. It is the onerous duty of the Court within permissible limit to find out the truth. It means, on the other hand no innocent man should be punished but on the other hand to see no person committing an offence should get scot-free. If in spite of such effort suspicion is not dissolved, it remains writ at large, benefit of doubt has to be created to the accused. For this, one has to comprehend the totality of facts and the circumstances as spelled out through the evidence, depending on the facts of each case by testing the credibility of the witnesses, of course after excluding that part of the evidence which are vague and uncertain. There is no mathematical formula through which the truthfulness of the prosecution or a defence case could be concretized. It would depend upon the evidence of each case including the manner of deposition and his demeanors, clarity, corroboration of witnesses and overall, the conscience of a Judge evoked by the evidence on record. So the Courts have to proceed further and make genuine efforts within judicial sphere to search out the truth and not stop at the threshold of creation of doubt to confer benefit of doubt.

17. Under this sphere, I now proceed to test the submissions of both

*Sessions Case Number : 61 of 2013.
Unique Case ID Number : 02401R0224952011
FIR No. 73/2011, Police Station Vikas Puri
Under section 376/354 of the Indian Penal Code.
State versus Ranjeet Singh*

the sides.

CASE OF THE PROSECUTION, ALLEGATIONS AND PROVED DOCUMENTS

18. The prosecution case unveils with the prosecutrix coming to Police Station Vikas Puri and lodging the complaint (**Ex-PW1/A**) with the Police Commissioner on 03.03.2011 for taking action against the accused. The FIR (**Ex-PW6/A**) was registered by Duty Officer SI Ombir Dabas (**PW6**), certificate under section 65 B Evidence Act (**Ex. PW6/B**) was issued and endorsement (**Ex.PW6/C**) was made. The investigation was marked to IO/SI Vandana (**PW7**). On 03.03.2011, IO SI Vandana along with Ct. Jitender (**PW3**) arrested the accused from K.R Manglam School, Vikas Puri, New Delhi vide arrest memo (**Ex-PW3B**) and his personal search was taken vide personal search memo (**Ex-PW3/C**). The prosecutrix (**PW1**) was taken by Ct. Sudesh (**PW 9**) to the DDU hospital for her medical examination where she was medically examined by Dr. Kanika Sood and Dr. Khalid Ali Khan (who have since left the services of the hospital) vide MLC (**Ex. PW8/A**) which was proved by Dr. Sunita Seth (**PW8**) and Dr. Shweta (**PW10**). The exhibits pertaining to the prosecutrix were taken by the doctors and seized vide seizure memo (**Ex.PW7/A**). The accused was taken by Ct. Joginder (**PW3**) to the DDU hospital for his medical examination where he was medically examined by Dr. Shruti (accused has admitted his medical examination by Dr. Shruti, her evidence and the MLC on 28.05.2013 and the MLC has been exhibited as **Ex.PX-1**). The exhibits pertaining to the accused were taken by the doctors and seized vide seizure memo (**Ex. PW3/A**). The site plan (**Ex. PW7/B**) was prepared at the instance of the prosecutrix (**PW1**).

On 04.03.2011, the accused was produced in the Court and was sent to judicial custody and statement under section 164 of the Cr.P.C (**Ex.PW1/B**) of the prosecutrix was recorded by Mr. Rajesh Malik, learned Metropolitan Magistrate on the application of IO (**Ex. PW7/C**) and IO had moved an application for supply of copy of the statement under section 164 of the Cr.P.C (**Ex. PW7/D**). During investigation Refugee certificates pertaining to the prosecutrix (**PW1**) as well as interpreter were collected (**Ex. PW7/E and Ex. PW7/F**). On 03.03.2011, IO SI Vandana (**PW7**) had deposited with HC Krishan Mohan, MHCM (**PW4**) eight sealed pullandas and two sample seals with seal of DDU hospital in the malkhana and entry to this effect was made in register number 19 at serial number 1530 (**Ex. PW4/A**) and on 25.03.2011 eight samples and two sample seals were sent to FSL Rohini through Ct. Kalu Ram (**PW5**) vide RC number 15/21/11 and photocopy of the RC Register (**Ex. PW4/B**) and acknowledgement (**Ex. PW4/C**). The exhibits of this case were examined by the FSL expert Mr. Naresh Kumar, Senior Scientific officer, Biology, (**PW11**) vide his detailed FSL reports (**Ex.PW11/A and serological report Ex.PW11/B**).

19. As per the allegations of the prosecution, accused Mr.Ranjeet Singh on 02.03.2011 at 9.00 p.m at WZ-36 Bodella, Vikas Puri, the accused had committed rape on the prosecutrix; again on 03.03.2011 at about 7.00 a.m in the abovesaid premises, the accused used criminal force upon the prosecutrix intending to outrage her modesty.

TESTIMONIES OF THE PROSECUTION WITNESSES

20. It is necessary to elaborate the testimonies of the witnesses of the prosecution in brief.

The Most Material Witness-Prosecutrix

21. **PW1, the prosecutrix**, has deposed that on 02.03.2011 at around 9.00 pm, her husband was not at their house at House No.WZ-36 Budella, Vikas puri, Delhi. She was present at her house along with her son, aged about 3 years. Her other three sons were also not in home and she was sleeping at her house. The door of her house was not locked as her husband has just gone outside. Accused Mr.Ranjeet Singh entered her house and forcibly raped her. She did not notice that whether or not he had bolted the door of her house from inside as the offence was committed suddenly. She could not resist the accused as the accused has over powered her and could not shout for help. As her son who was playing outside came inside the house, the accused left the house. After 10 minutes leaving of accused, her husband reached at the house. She narrated about the incident to her husband. Her husband did not call the police. On 03.03.2011, at around 7.00 am, when she was washing the vegetables near water tank, the accused came from behind and caught hold of her and pressed her breast. She shouted for help and called her husband, who was sleeping inside the house. Her husband called the neighbours as he was not in a position to call the police due to his language problem. Her landlord also reached there. Her landlord made enquiry from her whether she wanted any police action and she replied in positive. Her landlord asked her to identify the person, who had committed rape upon her. Accused fled away from her house. She along with her husband went to SLIC office, who was

looking after Burmese people in India and reported the matter there. SLIC official also make enquiries from her whether she wanted any police action and she replied them in positive Thereafter, she along with her husband and SLIC official went to the Police Station and reported the matter to the police. The typed complaint (**Ex.PW1/A**) was made to the police regarding incident. She was also produced by the police before the learned Metropolitan Magistrate for recording her statement under section 164 Cr.P.C (**Ex.PW1/B**). She has been cross examined at length by the accused.

Public Witnesses

22. **PW2, Mr. Awn Khan Pau**, husband of the prosecutrix, has deposed that he was residing at House No.WZ-36, Budella, Vikas Puri, Delhi for about one year from the date of incident along with his family. He was residing as tenant on the said premises and was paying rent of Rs.2000/- per month. He had five children at present. On 02.03.2011 at around 8.40 pm, he had gone outside his house to dump garbage and only his small son was present in the house and other children were outside the house. After about half an hour, he came back to his house and the prosecutrix (his wife) told him that she had been raped by their neighbour. At the time of incident his wife was having two months pregnancy. He could not tell the name of neighbour, who raped the prosecutrix as he did not know about the name of said person. He could not report the matter to the police as he did not know any neighbour and his landlord was also not available with them. On the next day i.e. 03.03.2011 at around 7.00am, he was sleeping inside his house, he woke up on hearing cries of his wife. He asked her the reason. The prosecutrix told him that the person who had raped her on the previous day had again come to

their house and molested her. He informed about the incident to his neighbours, who informed to his landlord. One of the neighbours, Mr.Thanga, was of the Nation of Myanmar. After about 20 minutes, his landlord came there and made a call to the police. Police came at his house at about 8.30 am. Police made search of accused in the neighbourhood and nabbed him on the pointing out of the prosecutrix. Thereafter, police took the prosecutrix and the accused to the Police Station. Then the prosecutrix was taken by the police to the hospital for her medical examination. He has been cross examined at length by the accused.

Medical Evidence

23. **PW8, Dr. Sunita Seth**, Specialist OBG, DDU hospital had been deputed to depose in place of Dr. Kanika Sood, Senior Gyane (who has since left the services of hospital) who medically examined the prosecutrix and she has proved the MLC of the prosecutrix (**Ex.PW8/A**).

24. **PW10, Dr.Shweta**, MO (Radiology), DDU hospital has deposed that Dr. Khalid Ali Khan SR (who has since left the services of hospital) had medically examined the prosecutrix under her supervision.

Forensic Witness

25. **PW11, Dr. Naresh Kumar**, Senior Scientific officer (Biology), FSL, had examined the eight sealed parcels in connection with case FIR No. 73/2011 and prepared the detailed reports in this regard (**Ex.PW11/A and Ex.PW11/B**).

Police Witnesses-Formal

*Sessions Case Number : 61 of 2013.
Unique Case ID Number : 02401R0224952011
FIR No. 73/2011, Police Station Vikas Puri
Under section 376/354 of the Indian Penal Code.
State versus Ranjeet Singh*

26. **PW6, SI Omvir Dabas**, duty officer who had recorded the FIR (**Ex.PW6/A**) in the present case.

27. **PW4, HC Krishan Mohan** is the Mal Khana Moharrar. He has proved the relevant entries in register numbers 19 and 21(**Ex.PW4/A to Ex. PW/4C**) pertaining to the FIR No. 73/2011, PS Uttam Nagar regarding the deposit of the exhibits and their being sent to the office of the FSL.

28. **PW5, Ct. Kalu Ram**, had deposited 8 sealed pullandas and two sample seals at FSL, Rohini and handed over the receipt of the same to the MHCM/HC Krishan Mohan.

Police Witnesses-Material

29. **PW3, Ct. Jitender**, has deposed that on 03.03.2011, he was on patrolling duty in Beat Area, Budella Village and at around 6.00 p.m he came to know that a Burmese lady had been raped at H.No. 36 Z, Budella, Ist Floor and immediately called to duty officer of PS Vikas Puri. The duty officer told him the name of the accused Mr. Ranjeet Singh involved in the incident. He was knowing to accused prior to the incident as he used to reside in his beat area and also used to work as a security guard and took accused Ranjeet Singh and reached at Police Station. He accompanied IO/SI Vandana to DDU hospital for medical examination of the accused and Lady Ct. Sudesh accompanied the prosecutrix for her medical examination. Doctor handed over a four sealed pullandas and one sample seal which he handed over to the IO who seized the same through seizure memo (**Ex-PW3/A**). Accused was arrested vide arrest memo (**Ex.PW3/B**) and his personal search was taken

vide personal search memo (**Ex.PW3/C**). The IO prepared the site plan at the instance of the prosecutrix. He has been cross examined at length by the accused.

30. **PW7, WSI Vandana**, is the Investigation Officer of the case. She has deposed that on 03.03.2011, the complainant along with her husband and one interpreter Ms. Ro Rel Lian working at NGO, SLIC came to Police Station Vikas Puri as complainant was having some language problem and was not able to communicate Hindi or English. In the meantime, beat Ct. Jitender brought accused Mr.Ranjeet Singh to Police Station and thereafter SHO conducted inquiries from Mr.Ranjeet Singh and on the instructions of the SHO, both the accused as well as the complainant were taken to the hospital for their medical examination. The said complaint was put up before SHO, who made endorsement upon the same for registration of the FIR and investigation was marked to her of the said complaint. Lady Ct. Sudesh handed over the exhibits pertaining to the complainant/ prosecutrix which were seized by her through seizure memo (**Ex.PW7/A**) and exhibits pertaining to accused produced by Ct Jitender vide seizure memo (**Ex. PW3/A**) and were deposited in malkhna. The accused was sitting in the Police Station and was arrested in the present case vide arrest memo (**Ex.PW3/B**) and his personal search was taken vide personal search memo (**Ex.PW3/C**). She also recorded the statement of complainant under section 161 Cr.P.C in the Police Station. On 04.3.2011, the accused was produced in the Court and was sent to judicial custody and on the same day the statement of the prosecutrix under section 164 of the Cr.PC was recorded. During investigation, she has collected the Refugee Certificates pertaining to the

prosecutrix as well as interpreter (**Ex. PW7/E** and **Ex. PW7/F**). She has been cross examined at length.

IMPORTANT ISSUES

31. The important issues and the points in dispute are being discussed hereinafter.

IDENTITY OF THE ACCUSED

32. It is argued on behalf of the accused that his identity as the culprit and perpetrator of the crime is not established. He is not named in the complaint made to the police (**Ex.PW1/A**) and the statement of the prosecutrix under section 164 of the Cr.P.C. (**Ex.PW1/B**).

33. However, I find that the name of the accused i.e. Mr.Ranjit Singh is mentioned in the rukka as well as the MLC of the prosecutrix (**Ex.PW8/A**). His description is mentioned in the statement of the prosecutrix under section 164 of the Cr.P.C. (**Ex.PW1/B**) as having injury mark on his forehead and did not have one teeth. The description matches with the accused completely and fully as the accused also has an injury mark on his forehead and does not have one tooth.

34. The prosecutrix, in her statement under section 164 of the Cr.P.C. (**Ex.PW1/B**), has stated that the person stays in the same building and the same has not been disputed by the accused as he also stays in the same building.

35. Accused Mr.Ranjeet Singh has been identified by the prosecutrix

during her evidence as PW1. It is also not in dispute that they were known to each other (being neighbours) prior to the lodging of the FIR. The prosecutrix and her husband have explained in their evidence that due to language problem and as the prosecutrix did not know the name of the accused at the time of the first incident, his name was mentioned in the complaint. However, later on, they not only identified him but also gave his name to the police. The accused is also named in the rukka as well as the FIR (**Ex.PW6/A**), and in the evidence of the prosecutrix. He was identified by the prosecutrix and her husband as well as the witnesses of investigation during their evidence and there is no cross examination regarding his identity.

36. **Therefore, the identity of the accused as the culprit stands established.**

IDENTITY OF THE PROSECUTRIX

37. There is no dispute regarding the identity of the prosecutrix. It is not in dispute that the prosecutrix was residing with her family at the place of incident i.e. WZ-36 Bodella, Vikas Puri, New Delhi. It is also not in dispute that the prosecutrix is a Burmese refugee and she has been issued a Refugee Certificate (Refugee Certificates pertaining to the prosecutrix and the interpreter-**Ex.PW7/E and Ex.PW7/F** were collected by the IO and the same are not disputed by the accused and his counsel who admitted that the prosecutrix is a **Burmese national and a refugee in India** (also as elaborated on page 3 of the examination in chief of PW7 IO SI Vandana which is uncontroverted).

38. **Therefore, the identity of the prosecutrix stands established.**

AGE OF THE PROSECUTRIX

39. There is no dispute that the prosecutrix was above 18 years of age at the time of the incident. In her statement under section 164 of the Cr.P.C. (Ex.PW1/B), the prosecutrix has told her age as 33 years. In her evidence before the Court on 08.02.2013, she has stated that she is 35 years old.

40. **Therefore, it is clear that the prosecutrix was a major at the time of incident.**

VIRILITY OF THE ACCUSED

41. The accused has been medically examined by Dr.Shruti (**As per the statement of counsel for accused that Dr. Shruti need not to be examined as her evidence as well as MLC are admitted**) vide MLC no. 4095 E.no. 39808 dated 03.3.2011 wherein it is opined that ***“There is no clinical evidence to suggest that patient (accused) is not capable of performing sexual activity)”***

42. This report indicates that the accused is virile and is capable of performing sexual act and is capable of committing the act of rape.

FSL REPORT

43. The FSL report (Ex.PW11/A) shows that ***human semen was***

Sessions Case Number : 61 of 2013.
Unique Case ID Number : 02401R0224952011
FIR No. 73/2011, Police Station Vikas Puri
Under section 376/354 of the Indian Penal Code.
State versus Ranjeet Singh

detected on exhibits '2', '3a', '3b' and '5' which are the vaginal swab, vaginal and cervical smears and semen sample respectively.

44. PW11, Mr.Naresh Kumar, Senior Scientific Officer (Biology) FSL has not been cross examined by the accused and therefore his evidence remains uncontroverted and unrebutted and can be presumed to be admitted by the accused.

45. The report shows that human semen has been detected on the vaginal swab, vaginal smear and the cervical smear of the prosecutrix as well as the semen sample of the accused.

46. **These facts indicate that the prosecutrix has had physical relations with a man and further indicates that the same is the accused.**

WITNESSES NOT EXAMINED BY PROSECUTION

47. The counsel for the accused has argued that as the prosecution has failed to examine some important and material witnesses, the case is not proved against the accused. It is argued that Ms.Maboih daughter of Mr.Lah Ro Thuam, who interpreted the statement of the prosecutrix to the police, Ms.Ro Rel Lian,who interpreted the statement of the prosecutrix under section 164 of the Cr.P.C. and Mr.Rajesh Malik, learned Metropolitan Magistrate who recorded the statement of the prosecutrix under section 164 of the Cr.P.C. have not been examined by the prosecution which is fatal to the prosecution case.

48. The Additional Public Prosecutor, on the other hand, has argued that as Ms.Ro was out of India, she was dropped vide statement dated. Ms.Maboih is a formal witness who had only interpreted the statement of the prosecutrix before the police. Mr.Rajesh Malik is an official witness. The fact that all three of them were not examined does not affect the prosecution case.

49. I am of the considered opinion that the fact Ms.Maboih and Ms.Ro Rel Lian were not examined by the prosecution does not affect the prosecution case in any manner as they has only interpreted the statement of the prosecutrix before the police and the learned Metropolitan Magistrate and their evidence is only formal in nature. During evidence before the Court, Mr. Khual Cin Kam, Third Secretary, Embassy of Union of Myanmar, Chankyapuri, New Delhi interpreted the evidence of the prosecutrix and her husband (who could speak only in Burmese language), after being administered the oath to interpret their evidence truthfully and completely.

50. As regards the non examination of Mr.Rajesh Malik, learned Metropolitan Magistrate who recorded the statement of the prosecutrix under section 164 of the Cr.P.C. is concerned, his evidence is purely official in nature. He had recorded judicial proceedings of which judicial notice can be and is being now taken under section 74 of the Indian Evidence Act. Even otherwise, the statement of the prosecutrix under section section 164 of the Cr.P.C. has also been proved in the evidence of the prosecutrix **(PW1)** as **Ex.PW1/B**.

51. Further, it has been argued that the landlord and the neighbours of

the prosecutrix including Mr.Thanga have not been examined by the prosecution which is a fatal flaw. However, I am of the considered opinion that the landlord and the neighbours are not the witnesses of the incident nor are the eye witnesses and had come to the spot after the incidents had occurred and therefore their non examination is immaterial. Even otherwise, PW2, the husband of the prosecutrix, had come immediately after both the incidents had occurred and he has been examined by the prosecution which may give sufficient corroboration to the evidence of the prosecutrix about the later events.

52. Therefore, non examination of Ms.Maboih, Ms.Ro Rel Lian, Mr.Rajesh Malik, learned Metropolitan Magistrate, the landlord and the neighbours of the prosecutrix by the prosecution is **not fatal** to the prosecution case.

DEFENCE OF THE ACCUSED

53. In his statement under section 313 of the Cr.P.C., the accused has given mainly three word answers by saying “It is wrong” to most of the questions or has denied the evidence against him. He has stated that he is innocent and has been falsely implicated in this case. He has stated that ***“A few days prior to 03.03.2011, may be on 25-26.02.2011 when I was cleaning outside my house, some water had gone towards the house of the prosecutrix due to which she had become annoyed. She has implicated in this false case as she was annoyed with me. She has implicated me in false case in collusion with the interpretor in order to extort money from me.”***

54. It may be observed here that the accused has not led any evidence in his defence to substantiate his stand. Further, it is clear from the cross examination of the prosecutrix (PW1) that the accused has not even given her any suggestion that a few days prior to 03.03.2011, may be on 25-26.02.2011, when he was cleaning outside his house, some water had gone towards the house of the prosecutrix due to which she had become annoyed. He has also not given her any suggestion that she has implicated him in this false case as she was annoyed with him. He has also failed to give her any suggestion that she has implicated him in false case in collusion with the interpreter in order to extort money from him.

55. The accused has taken two different stands in the cross examination conducted on his behalf of the prosecutrix and her husband and in his statement under section 313 of the Cr.P.C. On one hand, in the cross examination, the stand taken by the accused in his defence has not even been suggested while in his statement under section 313 of the Cr.P.C., he is claiming that the prosecutrix was annoyed with him as water went to her house while the accused was cleaning his own and that she wanted to extort money from him. The two stands are contradictory.

56. Even otherwise, the first time that he has mentioned about the prosecutrix being annoyed with him as water went to her house while the accused was cleaning his own and that she wanted to extort money from him or of being blackmailed by the prosecutrix is in his statement under section 313 of the Cr.P.C. I find that the accused has not even given a cursory suggestion to the prosecutrix to the same effect and has put a different story in

his own statement.

57. It has been argued on behalf of the accused that he has been falsely implicated by the prosecutrix at the instance of Mr.R.K.Bangoo, Advocate, Delhi Commission for Women (whose name is mentioned in the charge sheet). However, I find that the accused has not even given a cursory suggestion to the prosecutrix to the same effect nor has shown anything on the record to prove the same. It would be pertinent to mention that the Delhi Commission for Women's role in a rape case is of a support person and they do not instigate any woman/prosecutrix to lodge false cases.

58. The accused, admittedly, has not made any complaint to any authority-police or Court that the prosecutrix has got him falsely implicated in this case out of annoyance or for extorting money or any other extraneous reason. Even after filing of this case and during trial, he did not make any such complaint. If he was actually aggrieved, he would have immediately lodged a complaint against the prosecutrix that she is telling lies but he has failed to do so which indicates that he is not telling the truth. This fact also falsifies the defence of the accused.

59. All these facts indicate that he is putting up a false defence. The accused has only attempted unsuccessfully to mislead the Court.

60. The accused has also failed to show any motive or malafide intention on the part of the prosecutrix for implicating him in a false case. He has also failed to show how the prosecutrix would have benefitted by

implicating him in a false case. The accused failed to assign any malafide motive to PW1 that she would get him falsely implicated in a rape case. The defence of the accused does not appear to be probable.

61. **Therefore, I am of the considered opinion that there is no veracity in the defence of the accused.**

MENS REA / MOTIVE

62. Regarding the motive of crime, it may be observed that in a case based on circumstantial evidence, the existence of motive assumed significance though the absence of motive does not necessarily discredit the prosecution case, if the case stands otherwise established by other conclusive circumstances and the chain of circumstantial evidence is so complete and is consistent only with the hypothesis of the guilt of the accused and inconsistent with the hypothesis of his innocence.

63. The motive has to be gathered from the surrounding circumstances and such evidence should form one of the links to the chain of circumstantial evidence. The proof of motive would only strengthen the prosecution case and fortify the court in its ultimate conclusion but in the absence of any connecting evidence or link which would be sufficient in itself from the face of it, the accused cannot be convicted. Motives of men are often subjective, submerged and unnameable to easy proof that courts have to go without clear evidence thereon if other clinching evidence exists. A motive is indicated to heighten the probability that the offence was committed by the person who was impelled by the motive but if the crime is alleged to have been committed

for a particular motive, it is relevant to inquire whether the pattern of the crime fits in which the alleged motive.

64. In the present case there is sufficient evidence on record to show that the accused did have a motive to commit the offence. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, there can be no sweeping generalization. Each case must be judged on its own facts. These observations are only made to combat what is so often put forward in cases as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.

65. In the present case, a story has been projected by the accused that the prosecutrix was annoyed with him as water went to her house while the accused was cleaning his own and that she wanted to extort money from him. It is also not the case that the prosecutrix is a lady of easy virtue or characterless or known to have promiscuous. There is no such suggestion given to the prosecutrix and impliedly it indicates that the prosecutrix is a self respecting lady. It also emerges from the evidence of the prosecutrix that after

committing rape upon the prosecutrix, the accused on the next day outraged her modesty when he was apprehended. It also emerges that as the prosecutrix did not make any police complaint on the date of rape, he perhaps become more confident (and even felt encouraged) and again came on the next day when he outraged her modesty.

66. **All these facts in totality indicate that there was criminal intention and mens rea on the part of the accused.**

DELAY IN FIR

67. The delay in lodging the report raises a considerable doubt regarding the veracity of the evidence of the prosecution and points towards the infirmity in the evidence and renders it unsafe to base any conviction. Delay in lodging of the FIR quite often results in embellishment which is a creature of after thought. It is therefore that the delay in lodging the FIR be satisfactorily explained. The purpose and object of insisting upon prompt lodging of the FIR to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well the names of eye witnesses present at the scene of occurrence.

68. The contention of the advocate for the accused that there was a delay in lodging of the FIR which is fatal is now being taken into consideration.

69. It is claimed by the accused that as the FIR has been lodged on

03.03.2011 at 21.45 hours while the incident is of 02.03.2011 at 21.00 hours, the delay in lodging of the FIR has been not explained by the prosecution and cannot be condoned.

70. The Additional Public Prosecutor, on the other hand, has submitted that there is no delay in the lodging of the FIR as the criminal action was swung into motion as soon as possible since the prosecutrix did not know the name of the accused although he was her neighbor and as she could not speak Hindi and English languages and had approached the office of SLIC before coming to police.

71. I find that it is borne from the record that the prosecutrix, due to her language problem did not approach the police with a complaint of rape immediately after the alleged rape was committed upon her by the accused and he had run away on 02.03.2011 and she approached the police on the next day when the accused outraged her modesty and then she went to SLIC from where she went to the Police Station Vikas Puri accompanied by an interpreter since she could not speak Hindi and English languages.

72. Therefore, it cannot be said that the FIR was lodged after a delay which is fatal to the prosecution story. **The delay had been satisfactorily, logically and reasonably explained.**

STATEMENT AND EVIDENCE OF THE PROSECUTRIX IN TOTALITY WITH OTHER EVIDENCE

73. It is necessary to discuss and analyse the testimony of the most

*Sessions Case Number : 61 of 2013.
Unique Case ID Number : 02401R0224952011
FIR No. 73/2011, Police Station Vikas Puri
Under section 376/354 of the Indian Penal Code.
State versus Ranjeet Singh*

material witness i.e. PW1, the prosecutrix.

74. In the Court, during trial, the prosecutrix, as PW1, **in her evidence**, has deposed that on 02.03.2011 at around 9.00 pm, her husband was not at their house at House No.WZ-36 Budella, Vikas puri, Delhi. She was present at her house along with her son, aged about 3 years. Her other three sons were also not in home and she was sleeping at her house. The door of her house was not locked as her husband has just gone outside. Accused Mr.Ranjeet Singh entered her house and forcibly raped her. She did not notice that whether or not he had bolted the door of her house from inside as the offence was committed suddenly. She could not resist the accused as the accused has over powered her and could not shout for help. As her son who was playing outside came inside the house, the accused left the house. After 10 minutes leaving of accused, her husband reached at the house. She narrated about the incident to her husband. Her husband did not call the police. On 03.03.2011, at around 7.00 am, when she was washing the vegetables near water tank, the accused came from behind and caught hold of her and pressed her breast. She shouted for help and called her husband, who was sleeping inside the house. Her husband called the neighbours as he was not in a position to call the police due to his language problem. Her landlord also reached there. Her landlord made enquiry from her whether she wanted any police action and she replied in positive. Her landlord asked her to identify the person, who had committed rape upon her. Accused fled away from her house. She along with her husband went to SLIC office, who was looking after Burmese people in India and reported the matter there. SLIC official also make enquiries from her whether she wanted any police action and she

replied them in positive Thereafter, she along with her husband and SLIC official went to the Police Station and reported the matter to the police. The typed complaint (**Ex.PW1/A**) was made to the police regarding incident. She was also produced by the police before the learned Metropolitan Magistrate for recording her statement under section 164 Cr.P.C (**Ex.PW1/B**). She has been cross examined at length by the accused.

75. She has been cross examined by counsel for accused wherein she has admitted that she had not told the police and learned Metropolitan Magistrate that door of her house was opened when the accused has forcibly raped her. She has admitted to be correct that she had not told the police and learned Metropolitan Magistrate that door of her house was open when the accused has forcibly raped her. She had told the learned Metropolitan Magistrate that her son had come inside the room on which the accused had left (She was confronted with Ex.PW1/B, where it is not so recorded). She had told the learned Metropolitan Magistrate when she was washing the vegetables when the accused had come from behind and pressed her breast (She was confronted with Ex.PW1/B, where it is not so recorded and there is a mention that he had pressed her breast). The room where she was staying was small sized and was on the first floor. The kitchen and the bath room were outside the room. There were four rooms on the first floor and were occupied by other persons with their families. One Burmese family was also residing in one of the room on the first floor but she did not know their names. The police did not record the statement of her neighbours specially Burmese family. At the time of incident, no one was in the rooms on the first floor. Her landlord was residing on the ground floor. She did not know whether or not the

statement of her landlord was recorded by the police. The landlord had come with them to the Police Station. She did not know the name of her landlord. She pays Rs.2000/- per month as rent. Her husband was not doing any job at that time. Her eldest son was working. They were provided aid by UN office to the extent of more than Rs.10,000/- in three months. She has five children. Her eldest child i.e. a son is aged 17 years and her youngest child is 1 year and 4 months. She has an expense of Rs.6000/- per month approximately. Her eldest son had the salary of Rs.3000/- pm from his job in a private restaurant. Her husband is maintaining a mobile phone. She with her family have gone to the office of SLIC once or twice as there was a quarrel of her children with some one. She did not have the phone number of SLIC. She did not know at what time her neighbours returned in the evening. She found them inside their rooms in the morning on the next day. When she was washing vegetables, no other person was there. When her statement was recorded by the learned Metropolitan Magistrate, she was accompanied to the Court by the police, her husband and SLIC Official, who had interpreted her statement. There is electricity in her room where the accused had committed rape upon her. She did not have a TV in her room. She has admitted to be correct that her room in Budella was situated in a thickly populated residential area. She has denied the suggestion that she had stated to the learned Metropolitan Magistrate whatever she had been told to state by the interpreter. She has denied that she has filed a false case against the accused as advised by the interpreter who had typed her complaint and she had only signed on it. She has denied that she has not been raped by the accused. She has denied that the accused is innocent and has been falsely implicated in this case by her in order to extort money from him. She has denied that she has deposed falsely.

76. She has deposed on similar lines in her statement under section 164 of the Cr.P.C. **(Ex.PW1/B)** about both the incidents of 02.03.2011 and 03.03.2011 and has also described the culprit (description matches with the accused).

77. The counsel for the accused has argued that the evidence of the prosecutrix is not reliable as it suffers from several contradictions. The prosecutrix has not mentioned in her statement under section 164 of the Cr.P.C. **(Ex.PW1/B)** that her son had come inside the room on which the accused had left but in her evidence before the Court, she has so deposed. The prosecutrix has not mentioned in her statement under section 164 of the Cr.P.C. **(Ex.PW1/B)** that on 03.03.2011 that she was washing vegetables when the accused came and outraged her modesty by pressing her breast but in her evidence before the Court, she has so deposed.

78. I am of the considered opinion that although the two contradictions which are pointed out are very much in the evidence of the prosecutrix but they are very minor and can be ignored as they do not strike at the root of the prosecution case. Even otherwise, in her statement under section 164 of the Cr.P.C. **(Ex.PW1/B)** as well as her evidence before the Court, the prosecutrix has stated that the accused had touched/pressed her breast on 03.03.2011 which is relevant for the case and not whether or not she was washing the vegetables at that time.

79. It may be observed here that the evidence of the prosecutrix was

recorded much later to the incident and lodging of the FIR and the possibility of her forgetting the details regarding the dates cannot be completely ruled out. As far as minor inconsistencies are concerned in the statement of the prosecutrix, it may be observed minor variations in the accounts of the witnesses are often the hallmark of the truth of their testimony. When the discrepancies were comparatively of minor character and did not go to the root of the prosecution story, they need not be given undue importance. Mere congruity or consistency is not the sole test of truth in the depositions. In the depositions of witnesses there are always normal discrepancy, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person. Even otherwise, when an eye witness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully made his testimony totally non-discrepant. But Courts should bear in mind that it is only when discrepancies in evidence of witness are so incompatible with the credibility of his version that the Court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

80. The Supreme Court had an opportunity to discuss as to why discrepancies arise in the statements of witnesses. In the judgment reported

Sessions Case Number : 61 of 2013.
Unique Case ID Number : 02401R0224952011
FIR No. 73/2011, Police Station Vikas Puri
Under section 376/354 of the Indian Penal Code.
State versus Ranjeet Singh

as Bharwada Boginbhai Hijri Bhai v. State of Gujarat, 1983 (CRI) GJX 0252 SC, the Supreme Court pointed out the following reasons as to why the discrepancies, contradictions and improvements occur in the testimonies of the witnesses.

(a) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

(b) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(c) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

(d) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

(e) In regard to exact time of an incident, or the time duration of an occurrence, usually people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time sense of individuals which varies from person to person.

(f) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(g) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, of fill up details from

imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved through the witness is giving a truthful and honest account of the occurrence witnessed by him perhaps it is a sort of psychological defence mechanism activated on the moment.

81. It has been argued on behalf of the accused that the prosecutrix has stated in her statement under section 164 of the Cr.P.C. **(Ex.PW1/B)** regarding the incident of 02.03.2011 that she thought that the person who had entered her room was her husband while she has not so deposed in her evidence before the Court and this contradiction makes her evidence unreliable. However, I am of the considered opinion that there is no question put to her in her cross examination whether or not the light was on in her room (although a question regarding electricity being in her room is asked) and therefore, it may be possible that she did not realize immediately that the person who entered her room was not her husband. It is also clear from her statement under section 164 of the Cr.P.C. **(Ex.PW1/B)** that she was afraid of that person which indicates that she had realized by then that he was not her husband.

82. There is nothing material for the defence in the lengthy cross examination of the prosecutrix. Her evidence is corroborated by her husband, PW2, who has also deposed similarly. He has deposed that he had returned after the incident of 02.03.2011 and the prosecutrix had told him about it but he did not report the matter to police as he did not know any neighbor and his landlord was not available. On 03.03.2011, he woke up hearing the cries of his wife and she told him about the incident. The accused was apprehended on the

pointing out by his wife. Nothing useful or beneficial for the accused has been brought forth in his cross examination.

83. There is no reason shown why the prosecutrix would choose the accused only for leveling false allegations of rape and why she would jeopardize her future by doing so especially when there are no allegations of her having any vested interests or mala fide motive.

84. It may be observed here that it is settled principle of law that it is not in every case that the version of the prosecutrix must be corroborated in material particulars by independent witnesses. In a case where the Court is satisfied that the testimony of the prosecutrix is free from blemish and is implicitly reliable, then on the sole testimony of the prosecutrix conviction can also be recorded but in appropriate cases the Court may look for corroboration from independent sources or circumstances. The testimony of the prosecutrix has to be tested on the touch stone of truthfulness and credibility.

85. It is a case of heinous crime of rape, which carries grave implication for the accused, if convicted. Therefore, for convicting any person for the said offence, the degree of proof has to be that of a high standard and not mere possibility of committing the said offence. In a criminal case, the prosecution has to prove its case beyond reasonable doubt against the accused and not merely dwell upon the shortcoming of defence.

86. As has been held by Apex Court in a catena of judgments that on the

basis of the testimony of a single eye witness a conviction may be recorded, but it has also cautioned that while doing so the court must be satisfied that the testimony of the solitary eyewitness is of such sterling quality that the court finds it safe to base a conviction solely on the testimony of that witness. In doing so the court must test the credibility of the witness by reference to the quality of his evidence. The evidence must be free of any blemish or suspicion, must be free of any blemish or suspicion, must impress the court as wholly truthful, and must appear to be natural and so convincing that the court has no hesitation in recording a conviction solely on the basis of the testimony of a single witness. (Reliance can be placed upon the judgment of the hon'ble Delhi High Court reported as **Ashok Narang v. State, 2012 (2) LRC 287 (Del)**).

87. Therefore, it is clear that the evidence of the prosecutrix is reliable and believable despite the so called contradictions or inconsistencies in the same as they are too minor and insignificant and do not strike at the root of the case. It cannot be expected from a lady to remember all the dates and details. She has to deal with the discomfort and face the battery of questions due to which there is a possibility that she may get mixed up or confused about the dates and details.

88. It emerges from the evidence of the prosecutrix (**PW1**) as well as her husband (**PW2**) that the accused had entered her premises on 02.03.2011 at 9.00 p.m. and committed rape on her. Then again on 03.03.2011 at about 7.00 a.m. at WZ-36 Bodella, Vikas Puri, New Delhi, the accused used criminal force upon the prosecutrix intending to outrage her modesty.

89. The evidence of the prosecutrix appears to be reliable and believable. It appears to be without any flaw or blemish. It does not appear to be false or manipulated or instigated by anyone. Her evidence appears to be truthful and honest. It is worthy of credence and trust. Nothing has been shown by the accused to indicate that the prosecutrix had any vested interest in leveling false allegations against him.

90. Strength can be drawn from the case reported as **Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (SC), 1983 A.I.R.(S.C.) 753**, wherein the Apex Court observed:

“The solution of problems cannot therefore be identical. It is conceivable in the Western Society that a female may level false accusation as regards sexual molestation against a male for several reasons such as :-

(1) The female may be a 'gold digger' and may well have an economic motive to extract money by holding out the gun of prosecution or public exposure.

(2) She may be suffering from psychological neurosis and may seek an escape from the neurotic prison by phantasizing or imagining a situation where she is desired, wanted, and chased by males.

(3) She may want to wreak vengeance on the male for real or imaginary wrongs. She may have a grudge against a particular male, or males in general, and may have the design to square the account.

(4) She may have been induced to do so in consideration of economic rewards, by a person interested in placing the accused in a compromising or embarrassing position, on account of personal or political vendetta.

(5) She may do so to gain notoriety or publicity or to appease her own ego or to satisfy her feeling of selfimportance in the

context of her inferiority complex.

(6) She may do so on account of jealousy.

(7) She may do so to win sympathy of others.

(8) She may do so upon being repulsed.

10. By and large these factors are not relevant to India, and the Indian conditions. Without the fear of making too wide a statements or of overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban as also rural Society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites.”

91. **Therefore, it is clear from the above discussion and from the evidence of the prosecutrix and other corroborative witness, the prosecution has been able to prove its case under sections 376 and 354 of the IPC against the accused.**

INVESTIGATION

92. The investigation conducted in the present case has been deposed by police witnesses. The FIR has been proved by the duty officer. There is nothing on the record which could show that the investigation has not been conducted properly, fairly and impartially.

93. The investigation conducted including the documents prepared in the present case has been substantially proved by the police witnesses including the IO. There is nothing on the record to show that their testimonies are false or not reliable.

94. It is the actual crime which is important than the investigation. Where the actual crime is being elaborated and proved in the evidence of the prosecutrix and other material witnesses, then the investigation becomes less important as prosecutrix has not only deposed regarding the manner of commission of the crime but has also elaborated all the details and has assigned a clear and specific role to the accused.

95. There are two stages in the criminal prosecution. The first obviously is the commission of the crime and the second is the investigation conducted regarding the same. In case the investigation is faulty or it has not been proved in evidence at trial, does it absolve the liability of the culprit who has committed the offence? The answer is logically in the negative as any lapse on the part of the investigation does not negate the offence.

96. It may also be observed here that the accused has also failed to show that he is not the person who had raped the prosecutrix on 02.03.2011 and outraged her modesty on 03.03.2011. The accused has failed to make any complaint to the police or the Court that he has been falsely implicated. The accused has also failed to lead any evidence to substantiate his claim or falsify the prosecution version or show that the evidence of the prosecution witnesses is not reliable and credible.

97. The investigation conducted including the documents prepared in the present case has been substantially proved by the police witnesses including the IO. They have clearly deposed that they were informed about the rape of

the prosecutrix; the accused as well as the prosecutrix were taken to the hospital for their medical examination; accused was arrested; documents pertaining to his arrest were prepared; parcels of the accused and the prosecutrix were seized; medical documents were prepared; parcels were collected from the doctor and sent to the FSL for examination; etc. There is nothing on the record to show that their testimonies are false or not reliable.

98. There is nothing shown by the accused which could indicate that the investigation is faulty. In fact, the investigation appears to have been conducted fairly and properly.

CONCLUSION

99. It is clear from the record that the evidence of the prosecutrix (**PW1**) is free from blemishes. It is worthy of credence and trust. Nothing has been shown by the accused to indicate that the prosecutrix had any vested interest in leveling false allegations against him. Her evidence has been corroborated by the evidence of her husband (**PW2**).

100. The prosecution has been able to prove in the evidence of the prosecutrix and other witnesses that on 02.03.2011 at 9.00 p.m., the accused had entered into the premises of the prosecutrix while she was alone with her son aged 3 years and had forcibly had physical relations with her amounting to rape and then he left her premises when her son, who was playing outside came inside. After 10 minutes, her husband returned and she told him about the incident. Police was not called and the matter was not reported as both the prosecutrix and her husband did not speak Hindi and English languages and

could speak only in Burmese language and as they did not know any neighbor and the landlord was not available. Then again on 03.03.2011 at about 7.00 a.m., the accused came and touched/pressed her breast amounting to use of criminal force upon the prosecutrix intending to outrage her modesty. When the prosecutrix shouted for help, her husband, neighbours and landlord came and the accused fled from there. The prosecutrix and her husband went to the office of SLIC (an NGO as mentioned in the evidence of PW7) from where they went to Police Station Vikas Puri with an interpreter and made the complaint.

101. In the case of Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622, the Apex Court has laid down the tests which are prerequisites before conviction should be recorded, which are as under:

- 1. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must or should' and not 'may be' established;***
- 2. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;***
- 3. The circumstances should be of conclusive nature and tendency;***
- 4. They should exclude every possible hypothesis except the one to be proved; and***
- 5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.***

102. Applying the above principles of law to the facts of present case, it

is evident that the evidence of the prosecution especially the prosecutrix is reliable, believable and trustworthy and the prosecution has established the case of cheating, forgery and rape. The facts of the case are consistent with the hypothesis of guilt of the accused.

103. The prosecution has successfully proved that on 02.03.2011 at 9.00 p.m at WZ-36 Bodella, Vikas Puri, he committed rape on the prosecutrix (name withheld to protect her identity) who is a Burmese refugee and on 03.03.2011 at about 7.00 a.m. at WZ-36 Bodella, Vikas Puri, New Delhi, he used criminal force upon the prosecutrix intending to outrage her modesty.

104. The prosecution has proved the identity of the accused, the identity of the prosecutrix as well as that she is a Burmese refugee, the virility of the accused, the manner in which the offence has been committed, place of commission of the offence, the investigation including the documents prepared, FSL report, etc. There is nothing which could shatter the veracity of the prosecution witnesses or falsify the claim of the prosecution. All the prosecution witnesses have materially supported the prosecution case and the testimonies of the prosecution witnesses do not suffer from any infirmity, inconsistency or contradiction and are consistent and corroborative. The evidence of the prosecution witnesses is natural and trustworthy and corroborated by circumstantial evidence and the witnesses of the prosecution have been able to build up a continuous link. All the facts relevant in respect of the offences punishable under sections 376 and 354 of the IPC have been properly proved.

105. In view of the foregoing reasons, the conscience of this Court is completely satisfied that the prosecution has been able to successfully bring home the charge against the accused Mr.Ranjeet Singh regarding the commission of offences punishable under sections 376 and 354 of the IPC.

106. Accordingly, the accused, Mr.Ranjeet Singh, is hereby convicted for having committed offences punishable under sections 376 and 354 of the IPC.

107. Let him be heard of the point of sentence.

Announced in the open Court on
this 28th day of October, 2013.

(NIVEDITA ANIL SHARMA)
Additional Sessions Judge,
(Special Fast Track Court)-01,
West, Tis Hazari Courts, Delhi.

IN THE COURT OF MS. NIVEDITA ANIL SHARMA,
ADDITIONAL SESSIONS JUDGE
(SPECIAL FAST TRACK COURT)-01,
WEST, TIS HAZARI COURTS, DELHI

Sessions Case Number : 61 of 2013.
Unique Case ID Number : 02401R0224952011.

State

Versus

Mr.Ranjeet Singh

Son of late Mr.Suchit Singh,
Resident of Security Guard, K.R Manglam School,
Vikas Puri, New Delhi.

First Information Report Number : 73/11.
Police Station Vikas Puri.
Under sections 376/354 of the Indian Penal Code.

Date of filing of the charge sheet before the Court of the Metropolitan Magistrate : 04.05.2011.
Date of receipt of file after committal in the Sessions Court : 30.05.2011.
Date of transfer of the file to this Court ASJ (SFTC)-01, West, THC, Delhi. : 19.01.2013.
Date of judgment : 28.10.2013.
Arguments on sentence concluded on : 11.11.2013.
Date of order on sentence : 11.11.2013.

Appearances: Ms. Neelam Narang, Additional Public Prosecutor for the State.
Mr.Ranjeet Singh, convict has been produced from judicial custody.
Mr.S.D.Pushkar, counsel for the convict.
Ms.Shubra Mehendiratta, counsel for the Delhi Commission for Women.

Sessions Case Number : 61 of 2013.
Unique Case ID Number : 02401R0224952011
FIR No. 73/2011, Police Station Vikas Puri
Under section 376/354 of the Indian Penal Code.
State versus Ranjeet Singh

ORDER ON SENTENCE

“A while ago?” Anaxantis asked. “Yes, he raped me a while ago. Exactly nine months and two days ago. What's that? Nine months or nine minutes. It's the same. And it is in the past, you say? Then why is it still happening, every day, every time I close my eyes? Every time I hear someone behind me, and I don't know who it is? How is it that I get an almost irresistible urge to kill anyone who happens to touch me unexpectedly? Tell me, Hemarchidas, how do I forgive, let alone forget, something that is still happening, that keeps happening over and over? How? How do I do that?”
— Andrew Ashling, *The Invisible Chains - Part 1: Bonds of Hate*

1. In pursuance of judgment dated 28.10.2013 as passed by this Court convicting the accused namely Mr.Ranjeet Singh for offences punishable under sections 376 and 354 of the Indian Penal Code (hereinafter referred to as the IPC), I have heard the Additional Public Prosecutor for the State as well as the convict and the counsel for the convict on the point of quantum of sentence to be awarded to the convict and also carefully perused the case record.

2. In the present case, the prosecutrix (name withheld to protect her identity) is a Burmese refugee. The definition of “refugee” as per Wikipedia is “A **refugee** is a person who is outside his or her country of origin or habitual residence because they have suffered (or fear) persecution on account of race, religion, nationality, political opinion, or because they are a member of a persecuted 'social group' or because they are fleeing a war. Such a person may be called an 'asylum seeker' until recognized by the state where they make a claim.”

3. The 1951 United Nations Convention Relating to the Status of Refugees has adopted the following definition of a refugee (in Article 1.A.2):

“[A]ny person who: owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country”.

4. Under international law, refugees are individuals who:

- are outside their country of nationality or habitual residence;***
- have a well-founded fear of persecution because of their race, religion, nationality, membership in a particular social group or political opinion; and***
- are unable or unwilling to avail themselves of the protection of that country, or to return there, for fear of persecution.***

5. A refugee is a person who seeks protection, assistance and safeguard of his/her rights. Refugee populations consist of people who are terrified and are away from familiar surroundings. There can be instances of exploitation at the hands of enforcement officials, citizens of the host country, and even United Nations peacekeepers. Instances of human rights violations, child labor, mental and physical trauma/torture, violence-related trauma, and sexual exploitation, especially of children, are not entirely unknown.

6. In the present case, the prosecutrix, who is a Burmese refugee, sought support from our country, a refugee-receiving State. Being the host country, it was the duty of all Indians including the convict to ensure that no harm comes to the prosecutrix. It was not only a legal duty but also a moral duty since the prosecutrix had taken refuge in our country. However, the faith

reposed in this country by the prosecutrix was shattered when the convict committed the offences of rape and outrage of modesty against her.

7. Rape is an abominable and ghastly and it is unforgivable being inhuman and barbaric when the victim, a refugee, is subjected to unwanted physical contact by a perverted male adult who was under a duty, a responsibility, being a citizen of the host country.

8. “The psychological harm on the victim is massive as it evokes doubts, raises questions for which answers are not easy to get. The victim may suppress emotions or be filled with feelings of rage, guilt and shame. It is difficult for such victims to trust others later on in life. The victim needs to stand up for himself/herself and not allow the trauma to make them psychologically and socially weak. Active social support from family, friends, guidance centres and counselors can bring the victim’s faith in the goodness of human beings back.” ---**Dr.Sanjay Chugh, Senior Consulting Psychiatrist.**

9. The Additional Public Prosecutor for the State has requested for the maximum sentence to be imposed upon the convict submitting that he does not deserve any leniency keeping in view the offence committed by him.

10. The convict and his counsel, on the other hand, have requested for a lenient view to be taken against him and for his release on probation as the convict hails from a modest family. He is married man, aged about 42-43 years. He was working as a Security Guard. He is the only bread winner of his

family comprising of his wife and two minor children including an unmarried daughter. He is in custody w.e.f. 04.03.2011. He is a first offender and has never committed any offence earlier. It is also assured that he shall not commit any offence in future.

11. Considering the aforesaid submissions from both the sides, the family circumstances of the convict and perusing the case record, I consider it proper to award a substantive sentence upon the convict. Rape in itself is abominable, ghastly, inhuman and barbaric. The convict has violated the person and soul of the prosecutrix. He has subjected the prosecutrix to unwanted perverted physical contact.

12. The victim lacks self-confidence and is always under a sense of guilt and denial. It's not about the body. It's more about the mind. Sexual abuse is a rape of the mind and thought processes.

13. Keeping in view the offence committed by the convict, I am not inclined to take a lenient view against him and release him on probation. He has raped a young woman who was helpless, defenceless, vulnerable and an easy prey. He has violated the very sanctity of the relationship between his being a citizen of the host country and her being a refugee here. She must have undergone immense physical pain and agony when the offence was committed. The convict went on to commit the ghastly, abominable, inhuman and barbaric act of rape, violating her person and giving her a lifelong trauma.

14. I am of the considered opinion that the convict should be awarded a

substantive, stern and firm sentence because he has defiled her. As per social morality which attaches highest importance to the chastity of a woman, the outrage and breach of her privacy and modesty is a heinous offence. Keeping into consideration the fact that the act of rape is an act of a perverted man, the minimum sentence provided of seven years or a lesser imprisonment should not be awarded to the convict. I do not find any mitigating factors.

15. The object of sentence should be to protect the society and to deter the criminal in achieving the avowed object to law by imposing appropriate sentence. The Courts are expected to operate the sentencing system so as to impose such sentence which reflects the conscience of the society and sentencing process has to be stern where it should be. To show mercy in the case of such a heinous crime would be a travesty of justice and the plea for leniency is wholly misplaced. The welfare and interest of other women in the society also needs to be protected for the reason that if the convict is released, they may be subjected by him in a similar offence with them.

16. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. Socio-economic, status, religion, race caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the

gravity of the offence. Courts must hear the loud cry for justice by the society in cases of heinous crime of rape on innocent helpless girls of tender years, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the court.

17. In the judgment reported as **Shri Bodhisattwa Gautm v. Miss Subhra Chakraborty, AIR 1996 SC 922**, the Hon'ble Apex Court observed that:“

The entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21 of the Constitution of India, 1950 (in short the 'Constitution'). The Courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized judge, in our opinion, is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisions.”

18. Sexual violence apart from the being a dehumanizing act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity. It degrades and humiliates the victim and leaves behind a traumatic experience. A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative

of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21 of the Constitution of India, 1950 (in short the Constitution) the Courts, are therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A society sensitized judge is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisions (Reliance can be placed upon **2004 IX AD (S.C.) 5** and **Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty (AIR 1996 SC 922)**).

19. Recently, crime against women generally and rape in particular is on the increase and the society also appears to be concerned for the honour of women. In this backdrop, this Court is required to treat the issue with more sensitivity. The object of sentence is not only required to be reformatory but it should also be punitive, preventive and deterrent. The offences against women are on a rise and there is an urgent need to curb this tendency by awarding deterrent punishment to perpetrators of this grave offence.

20. Section 376 of the IPC reads that Punishment for rape:- (1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:.....

21. Section 354 of the IPC provides with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and also for fine.

22. In the present case, the act of the convict is most deplorable, both legally and morally. It is time for realization that certain category of sexually depraved behaviour is totally unacceptable in the Indian Socio-Legal System which seeks to protect the chastity the first virtue of a woman and such behaviour can prove to be costly as has happened in the present case. The victim is a young woman, a Burmese refugee, who reposed trust in the country of the convict by taking refuge here. Then the convict shattered her faith by committing the offence.

23. Keeping in view the ghastly and inhuman act of the convict, a substantive and stern sentence is required to be imposed upon the convict so that it is not only in commensuration with the gravity of the crime but also serves as an example for the others who might also venture on the same forbidden path. The convict does not deserve any leniency or a minimum sentence.

24. Therefore, considering these aggravating facts, I hereby sentence convict, Mr.Ranjeet Singh,as follows:

for offence under section 376 of the IPC to rigorous imprisonment for ten years and a fine in the sum of Rs.50,000/- in default of payment of which, he shall undergo rigorous imprisonment for a period of one

year; and

for offence under section 354 of the IPC to rigorous imprisonment for three years and a fine in the sum of Rs.10,000/- in default of payment of which, he shall undergo rigorous imprisonment for a period of six months.

25. Both the sentences shall run concurrently, in the event of the fine not being realized.

26. Benefit of section 428 of the Code of Criminal Procedure shall be given to the convict for the period already undergone by him during the trial, as per rules. The convict is in judicial custody w.e.f. 04.03.2011. He is sent to judicial custody for serving the remaining sentence.

27. The entire amount of fine, if realized, is awarded to the prosecutrix as compensation for the benefit of the prosecutrix. Fine has not been deposited by the convict.

28. Further, this Court directs that the State shall pay to the prosecutrix/victim an appropriate sum **as victim compensation** in terms of Rules 3 and 5 read with Entry 2 to the schedule of the Delhi Victims Compensation Scheme 2011 (notified on 02.02.2012) read with section 357-A of the Cr.P.C. The terms of the scheme entitle every rape victim to minimum compensation of Rs.2 lacs and a maximum compensation of Rs.3 lacs. Having regard to the facts of the case and the circumstances of the

prosecutrix/victim, the Government of NCT is directed to pay an appropriate amount of compensation to the victim. 75 % of the amount shall be deposited in a fixed deposit, in terms of Rule 7 of the Scheme, in a nationalized bank for a period of three years and the remaining 25 % shall be available for utilization and initial expenses by the victim/prosecutrix.

29. These directions shall be complied within six weeks. The Delhi Legal Services Authority, which is the designated body under the said Scheme, shall oversee the implementation of these directions. The State shall ensure that the victim is duly informed within one week. The victim shall appear the Delhi Legal Services Authority on **22.11.2013** for the said purpose.

30. The convict is informed that he has a right to prefer an appeal against this judgment. He has been apprised that in case he cannot afford to engage an advocate, he can approach the Legal Aid Cell, functioning in Tihar Jail or write to the Secretary, Delhi High Court Legal Services Committee, 3437, Lawyers Chamber Block, High Court of Delhi, New Delhi.

31. A copy of the judgment dated 28.10.2013 and a copy of the order on sentence dated 11.11.2013, duly attested, besides the complete set of copy of the relevant case record, in compliance of directions of the High Court, be given to the convict, namely, Mr.Ranjeet Singh, free of cost immediately.

32. A copy of the judgment dated 28.10.2013 and a copy of the order on sentence dated 11.11.2013 also be given to the Additional Public Prosecutor, as requested.

33. After completion of the formalities and expiry of the period of limitation, the ahlmad is directed to consign the file to the record room.

Announced in the open Court on
this 11th day of November, 2013.

(NIVEDITA ANIL SHARMA)
Additional Sessions Judge,
(Special Fast Track Court)-01,
West, Tis Hazari Courts, Delhi.
